

COPY

BEFORE THE ARIZONA STATE BOARD OF NURSING

IN THE MATTER OF NURSING
ASSISTANT PROGRAM NO. NA8912

ISSUED TO: ACCORD HEALTHCARE
INSTITUTE
5336 N. 19th Ave.
Phoenix, AZ 85015

CONSENT AGREEMENT

AND
ORDER NO.
160802NA8912

RESPONDENT

CONSENT AGREEMENT

A complaint charging Accord Healthcare Institute ("Respondent") with violation of the Nurse Practice Act has been received by the Arizona State Board of Nursing ("Board"). In the interest of a prompt and speedy settlement of the above-captioned matter, consistent with the public interest, statutory requirements and the responsibilities of the Board, and pursuant to A.R.S. § 41-1092.07(F)(5), the undersigned parties enter into this Consent Agreement as a final disposition of this matter.

Based on the evidence before it, the Board makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Respondent holds Board issued program approval for a nursing assistant program receiving its original approval 3/31/2012. Its last program approval was granted on 6/30/2015.
2. On or about Feb 12, 2016, Accord Healthcare Institute failed to give Complainant C an entrance exam prior to enrollment to assess comprehension of course materials for math, reading and English. A violation of R4-19-801 (B) (3) (a) (ii).
3. Between 2014 and 2016 Respondent failed to provide each student an opportunity to anonymously and confidentially evaluate the course in the following areas:

- textbook, classroom environment, clinical setting, clinical instructor and resources, a violation of R4-19-801 (A) (9).
4. Upon reviewing student files during site visit on 9/29/2016 it was discovered Respondent failed to keep accurate records of the hours and type of instruction and remediated absences. In addition, Respondent failed to produce all required elements of the student records for the cohort with a start date of 1/4/2016 through 9/5/2016, including accurate attendance records, retake exam information, or completed skills checklists, a violation of R4-19-801 (D) (2) (b) (c) (d).
 5. From 1/4/2016 to site visit on 9/29/2016 Respondent failed to have a qualified RN instructor as defined in R4-19-802 (C), present at all times and during all scheduled classroom, skills and clinical sessions. RN was not present in the skills labs, classroom or clinical site, who planned each learning experience, ensured curriculum requirements were met, or prepared lesson objectives and class content. Respondent also failed to have a qualified RN instructor supervising students who provided care to patients by remaining in the clinical facility and focusing attention on student learning needs during all student clinical experiences. These are violations of R4-19-801 (C) (8) (a, and c); (9); (10) and R4-19-805 (B) (1), (2), (4), (7), (12).
 6. On or around 1/4/2016 to 9/29/2016, the Clinical Instructor failed to engage in activities exclusively related to supervision of students, observe student performing tasks taught in the training program. There was no documentation in student files to support observation or performance each day consistent with course skills and clinical objectives. Which is a violation of R4-19-801 (C) (10) (c) (d) (e) and R4-19-805 (B) (1) (5) (11).
 7. According to student files, reviewed at the site visit on 9/29/2016, Respondent failed to provide 120 hours of total instruction in the following areas; instructor led in the classroom of 40 hours; instructor supervised practiced and testing in the laboratory setting a minimum of 20 hours and Instructor supervised clinical experience for a minimum of 40 hours. Although students may have had a total of 120 hours the hour breakdown was not in the required areas, as no student files reviewed showed the minimum of 40 hours of clinical practice, a violation of R4-19-802 (D) (1) and R4-19-805 (B) (5). This also shows conduct that may be a threat to the safety of patients relating to lack of required clinical time in preparation for graduation and caring for the public after completion of course, violating R4-19-805 (B) (12).

8. On or about December 2015 and during the site visit on 9/29/2016 Respondent utilized a CNA, instead of an RN to instruct skills to students during skills lab practice. Respondent failed to provide the minimum standards of acceptable and prevailing educational practice by having an unqualified instructor teaching the skills portion of the class, and failed to cease instruction as required when a qualified instructor is not available. Such conduct poses a threat to the safety and welfare of students, patients and the public, a violation of R4-19-801 (A) (1), (2), (C) (9) and R4-19-805 (B) (1), R4-19-805 (B) (12) and (7) were violated.
9. From 1/4/2016 to 9/29/2016, the Program Coordinator, Julia Lopez, failed to perform the duties in supervising and evaluating the program to ensure the program had qualified instructors, met hours requirements, maintained required records, and otherwise failed to ensure the program met all the requirements in the Nurse Practice Act, including Article 8, as required by R4-19-802 (B) (3).
10. Respondent failed to have a qualified RN instructor supervising students who provided care to patients from 1/4/2016 to 9/29/2016. In addition, Clinical Instructor Juan Lopez, failed to provide students with current and valid contact information during clinical rotation, a violation of R4-19-801(C) (9) (10).
11. Respondent failed to require satisfactory performance of all critical elements of each skill under R4-19-802 (H), as students were missing completed skills sheets in the student files starting with the cohort of 1/4/2016 to present. A violation of R4-19-801 (D) (2) (b).
12. On or around 12/3/2015 and 8/1/2016, Respondent provided misleading information to Complainant A and B during recruitment of Complainants, as Respondent enrolled Complainant A and B in program, and charged both Complainants a non-refundable application fee of \$200.00 with the knowledge that neither student had the funds to pay for the program. Respondent instructed Students A and B they would receive funding to pay for the program from Maximus or Maricopa at Work. Complainants A and B never received financial assistance from Maximus of Maricopa at Work, hence forfeiting their \$200 deposit, a violation of R4-19-805 (B) (9) and (12).

CONCLUSIONS OF LAW

Pursuant to A.R.S. §§ 32-1606, 32-1663 and 32-1664, the Board has subject matter and personal jurisdiction in this matter.

The conduct and circumstances described in the Findings of Fact constitute violations of A.R.S. § 32-1663 (D) as defined in § 32-1601(22/24):

(d) Any conduct or practice that is or might be harmful or dangerous to the health of a patient or the public (g) Willfully or repeatedly violation a provision of this chapter or rule adopted pursuant to this chapter (h) Committing an act that deceives, defrauds or harms the public (j)

Violation this chapter or rule that is adopted by the Board pursuant to this chapter.

R4-19-801. Common Standards for Nursing Assistant (NA) and Certified Medication Assistant (CMA) Training Programs requires the following:

A. Program Administrative Responsibilities
Board approval.

1. Any person or entity offering a training program under this Article shall, before accepting tuition from prospective students, and at all times thereafter, provide program personnel including a coordinator and instructors, as applicable, who meet the requirements of this Article.

2. If at any time, a person or entity offering a training program cannot provide a qualified instructor for its students, it shall immediately cease instruction and, if the training program cannot provide a qualified instructor within 5 business days, the training program shall offer all enrolled students a refund of all tuition and fees the students have paid to the program.

9. A training program shall provide each student with an opportunity to anonymously and confidentially evaluate the course instructor, curriculum, classroom environment, clinical instructor, clinical setting, textbook and resources of the program;

11. A training program shall submit written documentation and information to the Board regarding the following program changes within 30 days of instituting the change:

a. For a change or addition of an instructor or coordinator, the name, RN license number, and documentation that the coordinator or instructor meets the applicable requirements of R4-19-802 (B) and (C) for NA programs

B. Policies and Procedures

3. The program shall promulgate and enforce the following policies with accompanying procedures:

a. Admission requirements including:

ii. English language, reading and math skills necessary to comprehend course materials and perform duties safely.

b. Student attendance policy, ensuring that a student receives the hours and types of instruction as reported to the Board in the program's most recent application to the Board and as required in this Article. If absences are permitted, the program shall ensure that each absence is remediated by providing and requiring the student to complete learning activities that are equivalent to the missed curriculum topics, clinical experience or skill both in substance and in classroom or clinical time.

C. Classroom and clinical instruction

4. A training program shall provide, in either electronic or paper format, a written curriculum to each student on or before the first day of class that includes a course description, course hours including times of instruction and total course hours, instructor information, passing requirements, course goals, and a topical schedule containing date, time and topic for each class session.

5. For each unit or class session the program shall provide, to its students, written:

a. Measurable learner-centered objectives,

b. An outline of the material to be taught, and

c. The learning activities or reading assignment.

8. A training program instructor shall:

a. Plan each learning experience;

b. Ensure that the curriculum meets the requirements of this Section;

c. Prepare written course goals, lesson objectives, and class content and learning activities;

d. Schedule and achieve course goals and objectives by the end of the course; and

e. Require satisfactory performance of all critical elements of each skill under R4-19-802 (H) for nursing assistant and R4-19-803(D) (4) for medication assistant before allowing a student to perform the skill on a patient or resident without the instructor's presence at the bedside.

9. A qualified RN instructor shall be present at all times and during all scheduled classroom, skills laboratory and clinical sessions. In no instance shall a nursing assistant or other unqualified person provide any instruction, reinforcement, evaluation or independent activities in the classroom or skills laboratory.

10. A qualified RN instructor shall supervise any student who provides care to patients or residents by:

a. Remaining in the clinical facility and focusing attention on student learning needs during all student clinical experiences;

b. Providing the instructor's current and valid contact information to students and facility staff during the instructor's scheduled teaching periods;

c. Observing each student performing tasks taught in the training program;

d. Documenting each student's performance each day, consistent with course skills and clinical objectives;

- e. During the clinical session, engaging exclusively in activities related to the supervision of students; and
- f. Reviewing all student documentation.

D. Records

- 2. A training program shall maintain the following student records either electronically or in paper form for a minimum of three years for NA programs and five years for CMA programs:
 - b. A completed skill checklist containing documentation of student level of competency performing the skills in R4-19-802(F) for nursing assistant, and in R4-19-803 (D)(4) for medication assistants;
 - c. An accurate attendance record, which describes any make-up class sessions and reflects whether the student completed the required number of hours in the course;
 - d. Scores for each test, quiz, or exam and whether such test, quiz, or exam was retaken

R4-19-802. NA Program Requirements requires the following:

B. Program coordinator qualifications and responsibilities

3. A program coordinator's responsibilities include:

- a. Supervising and evaluating the program;
- b. Ensuring that instructors meet Board qualifications and there are sufficient instructors to provide for a clinical ratio not to exceed 10 students per instructor;
- c. Ensuring that the program meets the requirements of this Article; and
- d. Ensuring that the program meets federal requirements regarding clinical facilities under 42 CFR 483.151.

C. Program instructor qualifications and duties

1. Program instructor qualifications include:

- a. Holding a current, registered nurse license that is active and in good standing under A.R.S. Title 32, Chapter 15 and provide documentation of a minimum of one year full time or 1500 hours employment providing direct care as a registered nurse in any setting; and
- b. At a minimum, one of the following:
 - i. Successful completion of a three semester credit course on adult teaching and learning concepts offered by an accredited post-secondary educational institution,
 - ii. Completion of a 40 hour continuing education program in adult teaching and learning concepts that was awarded continuing education credit by an accredited organization,
 - iii. One year of full-time or 1500 hours experience teaching adults as a faculty member or clinical educator, or
 - iv. One year of full time or 1500 hours experience supervising nursing assistants, either in addition to or concurrent with the one year of experience required in subsection (C)(1)(a).
- 2. In addition to the program instruction requirements in R4-19-801(C), a nursing assistant program instructor shall provide on-site supervision for each student placed in a health care facility not to exceed 10 students per instructor;

D. Clinical and classroom hour requirements and resources

- 1. A nursing assistant training program shall ensure each graduate receives a minimum of 120 hours of total instruction consisting of:
 - a. Instructor-led teaching in a classroom setting for a minimum of 40 hours;

- b. Instructor-supervised skills practice and testing in a laboratory setting for a minimum of 20 hours; and
- c. Instructor-supervised clinical experiences for a minimum of 40 hours, consistent with the goals of the program. Clinical requirements include the following:
 - i. The program shall provide students with clinical orientation to any clinical setting utilized.
 - ii. The program shall provide a minimum of 20 hours of direct resident care in a long-term care facility licensed by the Department of Health Services, except as provided in subsection (iv). Direct resident care does not include orientation and clinical pre and post conferences.
- d. To meet the 120 hour minimum program hour requirement, a NA program shall designate an additional 20 hours to classroom, skill or clinical instruction based upon the educational needs of the program's students and program resources.

H. Skills: A nursing assistant instructor shall verify and document that the following skills are satisfactorily performed by each student before allowing the student to perform the skill on a patient or resident without the instructor present:

- 1. Hand hygiene, gloving and gowning; and
- 2. Skills in subsection (F) (7), (8) and (11) (a), (c), (d), (f), and (g).

R4-19-805. Deficiencies and Rescission of Program Approval, Unprofessional Program Conduct, Voluntary Termination, Disciplinary Action, and Reinstatement requires the following:

B. Unprofessional program conduct

A notice of deficiency or a disciplinary action including denial of approval or rescission of approval may be issued against a training program for any of the following acts of unprofessional conduct:

- 1. Failing to maintain minimum standards of acceptable and prevailing educational practice;
- 2. Any violation of this Article;
- 4. Failing to follow the program's or parent institution's mission or goals, program design, objectives, or policies;
- 5. Failing to provide the classroom, laboratory or clinical teaching hours required by this Article or described in the program description;
- 7. Permitting unqualified persons to supervise teaching-learning experiences in any portion of the program;
- 9. Engaging in fraud, misrepresentation or deceit in advertising, recruiting, promoting or implementing the program;
- 11. Failing to supervise students in the clinical setting in accordance with this Article or allowing more than the maximum students per clinical instructor prescribed in this Article;
- 12. Engaging in any other conduct that gives the Board reasonable cause to believe the program's conduct may be a threat to the safety or welfare of students, faculty, patients or the public.
- 14. Failing to take appropriate action to safeguard a patient's or resident's welfare or follow policies and procedures of the program or clinical site designed to safeguard the patient or resident;

16. Failing to promptly remove, or adequately discipline or train, program instructors whose conduct violates this Article or may be a threat to the safety or welfare of students, patients, residents, or the public.

The conduct and circumstances described in the Findings of Fact constitute sufficient cause pursuant to A.R.S. § 32-1664(N) to revoke, suspend or take other disciplinary action against Respondent's program approval in the State of Arizona.

Respondent admits the Board's Findings of Fact and Conclusions of Law.

In lieu of a formal hearing on these issues, Respondent agrees to issuance of the attached Order and waives all rights to a hearing, rehearing, appeal or judicial review relating to this matter. Respondent further waives any and all claims or causes of action, whether known or unknown, that Respondent may have against the State of Arizona, the Board, its members, offices, employees and/or agents arising out of this matter.

Respondent understands that all investigative materials prepared or received by the Board concerning these violations and all notices and pleadings relating thereto may be retained in the Board's file concerning this matter.

Respondent understands that the admissions in the Findings of Fact are conclusive evidence of a violation of the Nurse Practice Act and may be used for purposes of determining sanctions in any future disciplinary matter.

Respondent understands the right to consult legal counsel prior to entering into this Consent Agreement and such consultation has either been obtained or is waived.

Respondent understands that this Consent Agreement is effective upon its acceptance by the Board and by Respondent as evidenced by the respective signatures thereto. Respondent's signature obtained via facsimile shall have the same effect as an original signature. Once signed by Respondent, the Agreement cannot be withdrawn without the Board's approval or by

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stipulation between Respondent and the Board's designee. The effective date of this Order is the date the Consent Agreement is signed by the Board and by Respondent. If the Consent Agreement is signed on different dates, the later date is the effective date.

[Signature]
Respondent

Dated: 11/16/16

ARIZONA STATE BOARD OF NURSING

Joey Ridenour R.N. M.N. F.A.A.N.

Joey Ridenour, R.N., M.N., F.A.A.N.
Executive Director

Dated: 11/28/16

CONSULTANT NAME/LICENSE NUMBER LAST NAME

ORDER

In view of the above Findings of Fact, Conclusions of Law and the consent of Respondent, the Board hereby issues the following Order:

- A. Respondent's consent to the terms and conditions of the Order and waiver of public hearing is accepted.
- B. Respondent's program approval is placed on probation for 24 months.
- C. This Order becomes effective upon the Board and Respondent's acceptance of the Consent Agreement. The effective date of this Order is the date the Consent Agreement is signed by the Board and by Respondent. If the Consent agreement is signed on different dates, the later is the effective date. Probation is to commence the effective date of this Order.

D. If Respondent is noncompliant with any of the terms of the Order, Respondent's noncompliance shall be reviewed by the Board for consideration of possible further discipline on Respondent's nursing license.

F. Probation is subject to the following terms and conditions:

TERMS OF PROBATION

1. Notification of Public

Within seven days of the effective date of this Order, the Board shall note the probationary status of the program on the list of approved programs with the following notation: "VOLUNTARY CONSENT FOR PROBATION." Additionally the Board shall provide public access to this order through its website.

2. Outside Evaluation—Within 30 days of the effective date of this Order, Respondent shall engage the services of a consultant approved by the Board to evaluate the entire nursing assistant program curriculum, including clinical components, and provide a written evaluation with any recommendations for remediation. Respondent shall cause the evaluator to provide the evaluation and recommendations to the Board within 90 days of this order. The Board reserves the right to amend the terms of the probation based on the evaluator's report and recommendations.

3. REMEDIAL EDUCATION:

A. Within 45 days of the effective date of the consent agreement, Respondent shall provide, and listed Respondent staff shall attend four hours of live on-ground remedial education, to all Nursing Assistant Administrators, and all Nursing Assistant Instructors (clinical, lab and didactic) on each of the following topics:

1. Education regarding Article 8 of the Nurse Practice Act to all Administrators, Coordinator, instructors and ancillary staff.
2. Student centered teaching in the classroom and clinical for Coordinators and Instructors;
3. Education on development and implementation of an evaluation plan including frequency of evaluation, the person responsible, the evaluative criteria, the results of the evaluation and actions taken to improve the program to be attended by the Coordinator, all instructors and Administrator.

B. Respondent shall ensure that all newly hired clinical, lab and didactic Nursing Assistant Instructors receive 24 hours of continuing education before teaching duties commence as specified above except that the education may be delivered by distance, on-line, video or electronic means.

4. Quarterly Reports

Within 7 days of each assigned quarterly reporting due date, Respondent shall provide the Board with accurate and complete quarterly reports containing the following:

Copy of nursing any and all nursing department meeting minutes,

- b. Personnel changes,
- c. Admissions, graduations and attrition, and
- d. Any written or verbal complaints or concerns, formal or informal, including comments on evaluations, regarding the nursing program, including advertising/recruiting, made by students, prospective students, or members of the public, brought to the attention of faculty and/or the program coordinator, and their resolution.
- e. Curriculum changes

f. Clinical Placements

g. Results of confidential and anonymous student evaluations of nursing assistant courses, instructors, clinical experience and the overall program

The first report is due on the first assigned quarterly report due date after the effective date of the Order.

5. CURRENT STUDENT TESTING:

For students currently enrolled in program who were not permitted to test for certification due to not meeting the minimal hours requirements, or lack of documentation thereof: Program shall provide and submit proof of completion of minimal course hours to all affected current students as soon as completed, and within 30 days of effective date of this Order. Upon Board receipt of satisfactory proof of completion of minimal hours, the affected students will be approved to test.

6. MONITORING SITE VISITS:

During the period of probation, and consistent with A.A.C. Rule 4-19-801(B) (8), Board staff shall, at its sole discretion, and with or without advanced notice, perform site visits to ensure compliance with this Order and Nurse Practice Act requirements.

7. Interview with the Board or Its Designee

Respondent shall appear in person or if residing out of state telephonically for interviews with the Board or its designee upon request at various intervals and with reasonable notice.

8. Renewal of Approval

In the event Respondent's nursing assistant's program approval is scheduled to expire while this Order is in effect, Respondent shall apply for renewal of the approval and otherwise maintain approval for a nursing assistant's program in Arizona.

9. Obey All Laws

Respondent shall obey all laws/rules governing nursing education in this state and obey all federal, state and local criminal laws. Respondent shall report to the Board, within 10 days, any violation or potential violation of the Nurse Practice Act, Board of Nursing Rules or any federal, state or criminal laws.

10. Costs

Respondent shall bear all costs of complying with this Order.

11. Violation of Probation

The Board may revoke probation and take further disciplinary action for noncompliance with this Order after affording Respondent notice and the opportunity to be heard. If a complaint or petition to revoke probation is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

12. Voluntary Surrender of Approval

Respondent may, at any time this Order is in effect, voluntarily request surrender their program approval.

ARIZONA STATE BOARD OF NURSING

SEAL

Joey Ridenour R.N. M.N. F.A.A.N.

Joey Ridenour, R.N., M.N., F.A.A.N.
Executive Director

Dated: 11/28/2016

JR/II:

COPY mailed this 28th day of November 2016 via email and by U.S. First Class Mail
(Certificate Number: 7015 0640 0007 1010 8884, to:

Accord Healthcare Institute
5336 N. 19th Ave.
Phoenix, AZ 85015

Signed in the Board Office this 28th day of November, 2016.

By:

Lynne

Administrative Assistant